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09

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/304,564	05/04/99	CHURRI	11

000466 HM12/0814
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EXAMINER
HOLLERAN, A

ART UNIT	PAPER NUMBER
1642	

DATE MAILED: 08/14/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action	Application No. 09/304,564	Applicant(s) CHOKRI ET AL.
	Examiner Anne Holleran	Art Unit 1642
--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --		
<p>THE REPLY FILED 27 July 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may <u>only</u> be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.</p>		
<p><i>Art 8/6/01</i> <i>4</i> PERIOD FOR REPLY [check either a) or b)]</p>		
<p>a) <input checked="" type="checkbox"/> The period for reply expires <u>4</u> months from the mailing date of the final rejection.</p> <p>b) <input type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p> <p>ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p>		
<p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>		
<p>1. <input type="checkbox"/> A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.</p> <p>2. <input type="checkbox"/> The proposed amendment(s) will not be entered because:</p> <p>(a) <input type="checkbox"/> they raise new issues that would require further consideration and/or search (see NOTE below);</p> <p>(b) <input type="checkbox"/> they raise the issue of new matter (see Note below);</p> <p>(c) <input type="checkbox"/> they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> <p>(d) <input type="checkbox"/> they present additional claims without canceling a corresponding number of finally rejected claims.</p> <p>NOTE: _____. </p>		
<p>3. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____. </p> <p>4. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p> <p>5. <input checked="" type="checkbox"/> The a)<input type="checkbox"/> affidavit, b)<input type="checkbox"/> exhibit, or c)<input type="checkbox"/> request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See attached.</u></p> <p>6. <input type="checkbox"/> The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.</p> <p>7. <input type="checkbox"/> For purposes of Appeal, the proposed amendment(s) a)<input type="checkbox"/> will not be entered or b)<input type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p> <p>The status of the claim(s) is (or will be) as follows:</p> <p>Claim(s) allowed: _____. </p> <p>Claim(s) objected to: _____. </p> <p>Claim(s) rejected: <u>3-5</u>. </p> <p>Claim(s) withdrawn from consideration: _____. </p>		
<p>8. <input type="checkbox"/> The proposed drawing correction filed on _____ is a)<input type="checkbox"/> approved or b)<input type="checkbox"/> disapproved by the Examiner.</p> <p>9. <input type="checkbox"/> Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____. </p> <p>10. <input type="checkbox"/> Other: _____. </p>		

1. The rejection of claims 3-5 under 112, second paragraph, as failing to set forth the subject matter, which applicant(s) regard as their invention, is maintained for the reasons of record.

The rejection is maintained because the claimed inventions are broader in scope than what applicant's appear to regard as their invention. Evidence for this is found in Paper No. 7 (filed 1/4/2001) in which applicant stated that applicant's macrophages are distinguished over the prior art because of the incubation medium used. However, the claimed methods do not recite macrophages incubated in a specific medium, and therefore, the methods are drawn to methods using macrophages that are not the same in scope as the macrophages described in Paper No. 7.

2. The rejection of claims 3-5 under 35 U.S.C. 102(b) as being anticipated by Chokri et al (Chokri, M. et al., Res. Immunol., 143: 95-99, 1992) is maintained for the reasons of record.

Applicant argues that Chokri does not teach the macrophages recited in the claimed methods, and therefore, does not teach the claimed methods. This is unpersuasive because Chokri does teach macrophages that are the same as those recited in the claimed methods. The claimed methods are drawn to methods of treatment comprising administering bispecific antibodies and macrophages, where the macrophages have at least one of the following listed in claim 3. Chokri teaches macrophages that increase in cytotoxicity by 36 percent over control macrophages in the presence of IFN-gamma (see Table 1, 2nd column, compare line 1 with line 2, for example). Chokri also teaches killing tumor cells with macrophages and bispecific antibodies (Table 1, 3rd column).

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3. The rejections of claims 3-5 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 5,635,600 (Fanger et al, issued June 3, 1997; effective filing date Feb. 2, 1988) and under 35 U.S.C. 102(b) as being anticipated by WO 91/05871 (Medarex, Inc. published 2 May 1991) are maintained for the reasons of record.

Applicant argues that U.S. Patent 5,635,600 and WO 91/05871 fail to teach the macrophages of the claimed methods. This is unpersuasive because U.S. Patent 5,635,600 does teach the same macrophages, macrophages incubated in the presence of IFN-gamma (see col. 5, lines 24-27), as does WO 91/05871 (see page 6, line 31-page 7, line 3). Applicant has not provided evidence that IFN-gamma treated macrophages are different from the macrophages of claim 3.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the Office should be directed to Anne Holleran, Ph.D. whose telephone number is (703) 308-8892. Examiner Holleran can normally be reached Monday through Friday, 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa, Ph.D. can be reached at (703) 308-3995.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist at telephone number (703) 308-0196.

ALH
Anne L. Holleran
Patent Examiner
August 3, 2001

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